



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0696; FRL-9944-55-Region 4]

Air Plan Approval; South Carolina; Transportation Conformity Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the South Carolina State Implementation Plan (SIP) submitted on October 13, 2015, through the South Carolina Department of Health and Environmental Control (SC DHEC). This revision consists of transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. The intended effect of this approval is to update the transportation conformity criteria and procedures in the South Carolina SIP to reorganize previous exhibits into a single Memorandum of Agreement (MOA) document as well as updating signatories to add the newly established Lowcountry Area Transportation Study (LATS) to the list of Metropolitan Planning Organizations (MPOs), created to represent a new urbanized area designated as a result of the 2010 Census. EPA has determined that this revision is consistent with the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse comment by [Insert

date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2015-0696 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61

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SUPPLEMENTARY INFORMATION:

I. Transportation Conformity

Transportation conformity (hereafter referred to as “conformity”) is required under section 176(c) of the CAA to ensure that federally supported highway and transit activities are consistent with (“conform to”) the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and to areas that have been redesignated to attainment after 1990 (i.e., maintenance areas) with plans developed under section 175A of the Act, for the following transportation related criteria pollutants: ozone, particulate matter (e.g., PM_{2.5} and PM₁₀), carbon monoxide, and nitrogen dioxide.

Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards (NAAQS) for the relevant criteria pollutants. The conformity regulation is found in 40 CFR part 93 and provisions related to conformity SIPs are found in 40 CFR 51.390.

II. Background for this Action

A. Federal Requirements

EPA promulgated the Federal transportation conformity criteria and procedures (“Conformity Rule”) on November 24, 1993. 58 FR 62188. Among other things, the rule required states to address all provisions of the conformity rule in their SIPs, frequently

referred to as “conformity SIPs.” Under 40 CFR 51.390, most sections of the Conformity Rule were required to be copied verbatim into the SIP. States were also required to tailor all or portions of the following three sections of the Conformity Rule to the state’s individual circumstances: 40 CFR 93.105, which addresses consultation procedures; 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in a MPO’s transportation plan and transportation improvement program that must be obtained prior to a conformity determination, and the requirement that such commitments must be fulfilled; and 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

On August 10, 2005, the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU) was signed into law. SAFETEA-LU revised section 176(c) of the CAA transportation conformity provisions. One of the changes streamlined the requirements for conformity SIPs. Under SAFETEA-LU, states are required to address and tailor only three sections of the rule in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and, 40 CFR 93.125(c), described above. In general, states are no longer required to submit conformity SIP revisions that address the other sections of the Conformity Rule. These changes took effect on August 10, 2005, when SAFETEA-LU was signed into law.

B. South Carolina Transportation Conformity SIP

The Conformity Rule requires the states to develop their own processes and procedures for interagency consultation among the Federal, state, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The conformity SIP revision must include processes and procedures to be followed by the MPO, state DOT, and US DOT in consulting with the state and local air quality agencies and EPA before making conformity determinations. The SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and the US DOT.

In 2004, EPA approved the State of South Carolina's initial conformity SIP revision which incorporated by reference 40 CFR part 93, subpart A (67 FR 50808), and customized 40 CFR 93.105, 93.122 (a)(4)(ii), and 93.125(c) for all of the MPOs in the entire state and for the South Carolina Department of Transportation (SC DOT). 69 FR 4245. Specifically, the State of South Carolina established a MOA for implementing the conformity criteria and consultation procedures for all transportation-related pollutants. On July 28, 2009, EPA approved a revision to the SC MOA to address the relevant NAAQS and SAFTEA-LU amendments. 74 FR 37168.

III. State Submittal and EPA Evaluation

On October 13, 2015, the State of South Carolina, through SC DHEC, submitted the Statewide conformity and interagency consultation SIP, based on a new MOA signed by all of the MPOs in the State¹ and SC DOT, to EPA as a revision to the SIP. The SIP

¹ Although South Carolina currently has only one nonattainment area (i.e., a portion of York County) for the 2008 8-hour ozone NAAQS, its MOA covers all of the MPOs in the State should any new areas become subject to conformity requirements for a transportation-related pollutant in the future.

revision establishes procedures for interagency consultation and, upon EPA approval, supersedes the SIP revision that EPA approved on July 28, 2009. *See* 74 FR 37168.

Specifically, the SC DEHC is now proposing certain updates, including a reorganization that incorporates Exhibits 1 and 2 to the previous MOA into the new MOA itself, as well as the addition of the Lowcountry Area Transportation Study (LATS) to the list of MPOs which are signatories to the MOA. LATS is a newly established MPO that represents a new urbanized area designated as a result of the 2010 Census. LATS covers the Town of Hilton Head Island, the Town of Bluffton, and parts of unincorporated Beaufort County. The State also seeks approval of the following additional changes from the old MOA: clarification of the responsibilities of the MPOs, grammar and punctuation changes, recodification of sections C, D and E for ease of reading, the addition of language to specifically address the requirements of 40 CFR 93.122(a)(4)(ii) and 93.125(c), and the addition of a new “General Provisions” section (section F).

As noted in EPA’s 2009 approval, 74 FR 37168, the State of South Carolina developed its consultation SIP based on the elements contained in 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c) and included it in the SIP. As a first step, the State worked with the existing transportation planning organization’s interagency committee that included representatives from the SC DHEC; SC DOT; all of the MPOs in the State; Federal Highway Administration — South Carolina Division; Federal Transit Administration; and the Region 4 office of EPA. The interagency committee met regularly and drafted the consultation procedures, considering elements in 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c), and integrated the local procedures and processes

into the MOA. The resulting consultation process developed is unique to the State of South Carolina. SC DHEC offered the opportunity for a public hearing regarding the new MOA on January 6, 2015, but no hearing was requested and thus none was held. No comments, written or oral, were received from the public. The final MOA was issued by South Carolina on October 13, 2015, and subsequently submitted to EPA as a SIP revision.

EPA has evaluated this SIP revision and has determined that the State has met the requirements of federal transportation conformity rules as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. SC DHEC has satisfied the public participation and comprehensive interagency consultation requirement during development and adoption of the MOA at the local level. Therefore, EPA is approving the updated MOA as a revision to the South Carolina SIP.

EPA has reviewed the submittal to assure consistency with the CAA as amended by SAFETEA-LU and EPA regulations (40 CFR part 93 and 40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and has concluded that the submittal is approvable.

IV. Final Action

EPA is taking direct final action under sections 110 and 176 of the Act to approve the rule implementing the conformity criteria and consultation procedures revision to the South Carolina SIP pursuant to the CAA, as a revision to the South Carolina SIP. This action also establishes consultation procedures for all counties in South Carolina. As a result of this action, South Carolina's previously SIP-approved conformity procedures at

74 FR 37168 will be replaced by the procedures submitted to EPA on October 13, 2015, for approval and adopted by State of South Carolina on October 23, 2015.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [Insert date 60 days from the date of publication] without further notice unless the Agency receives adverse comments by [Insert date 30 days from date of publication].

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [Insert date 60 days from date of publication] and no further action will be taken on the proposed rule.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this

action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and

legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with

objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this issue of the Federal Register; rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Incorporation by reference, Intergovernmental relations, Incorporation by reference Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 25, 2016.

Heather McTeer Toney
Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 et seq.

Subpart (PP) – South Carolina

2. Section 52.2120(e) is amended by adding an entry at the end of the table for “South Carolina Transportation Conformity Air Quality Implementation Plan” to read as follows:

§ 52.2120(e) Identification of plan.

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(e) * * *

EPA Approved South Carolina Non-Regulatory Provisions

Provision	State effective date	EPA approval date	Explanation
**	**	**	*
South Carolina Transportation Conformity Air Quality Implementation Plan	10/23/2015	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	

[FR Doc. 2016-07811 Filed: 4/4/2016 8:45 am; Publication Date: 4/5/2016]